

The Embassy of the United States of America refers the Foreign and Commonwealth Office to the January 2008 proposal of Her Majesty's Treasury to replace the current Air Passenger Duty (APD) with a per-plane duty for flights taking off from airports in the United Kingdom. The Embassy, on behalf of the Government of the United States of America, wishes to express its deep concern with the proposal, which raises significant policy and legal issues.

The Treasury's proposal, although cast as an environmental measure, appears in reality to constitute nothing more than a device for generating additional revenue from the airline community. The Treasury estimates that the new per-plane duty would yield 520 million pounds sterling above the amount collected today as APD. However, there is no linkage between the funds collected from airlines and the mitigation of any environmental impact of airline emissions or any other environmental problem. Rather, all funds from the duty would be deposited in the United Kingdom general fund, to be used as Her Majesty's Government decides. Moreover, the Treasury's proposal does not demonstrate that the new duty would influence airlines to adjust their fleets or their booking practices to achieve higher load factors or to acquire more fuel-efficient aircraft in ways that existing fuel costs—constituting as much as 40 percent of airlines' total costs—do not. Nor are

any data provided to justify the levy based on an assessment of damage from aircraft emissions.

The proposed duty, by raising the overall cost of flying aircraft to the United Kingdom relative to other destinations, is likely to diminish the number of flights operating to and from the United Kingdom. This would seem an anomalous result, however, given the focus in the United Kingdom on, among other things, restoration of the competitiveness of Heathrow Airport with the opening of Terminal 5 and consideration of a third runway.

The proposed duty favors local short-haul flights and carriers over long-haul flights and carriers. This would be a perverse market distortion for a measure that claims to be justified on environmental grounds, giving as it would an advantage to those flights for which a reasonable alternative means of transportation—such as rail—may exist. Depending on the charging differential, this structure may create incentives for passengers or airlines to make an otherwise unnecessary stop inside the short-haul distance boundary, a practice that may have more environmental impact than a long-haul flight.

In addition to policy objections, the proposed duty raises serious legal concerns, including inconsistency with the United Kingdom's obligations as a party to the Convention on International Civil Aviation (Chicago, 1944)

and the Air Transport Agreement signed on April 25 and 30, 2007, by the United States and the European Community and its Member States (“the U.S.-EU Agreement”), which has been provisionally applied since March 30, 2008. For example, the preferential treatment accorded flights with destinations in the European Economic Area and short-haul flights generally raises issues of discrimination under both agreements. In addition, Article 15 of that Convention stipulates that “[n]o fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.” It would be hard for the United Kingdom to justify the proposed duty as anything other than a fee, duty or charge imposed on aircraft solely by reason of their exiting from the United Kingdom. Moreover, if this were an actual environmental measure, the proposed duty would be inconsistent with International Civil Aviation Organization (ICAO) policy on environmental charges and taxes. In its Resolution of 9 December 1996 (149<sup>th</sup> Session), the ICAO Council:

*[s]trongly recommends that any environmental levies on air transport which States may introduce should be in the form of charges rather than taxes and that the funds collected should be applied in the first instance to mitigating the environmental impact of aircraft engine emissions, for example to:*

*a) addressing the specific damage caused by these emissions, if that can be identified;*

*b) funding scientific research into their environmental impact;  
or*

*c) funding research aimed at reducing their environmental impact, through developments in technology and new approaches to aircraft operations.*

The Council further urged States to be guided by the principles in what is now titled “ICAO’s Policies on Charges for Airports and Air Navigation Services” (Doc 9082/7, Seventh Edition - 2004), underscoring that “*there should be no fiscal aims behind the charges*” and that “*the charges should be related to costs.*” Those policies have been further endorsed in subsequent ICAO Assembly Resolutions, including at the most recent Assembly, which took place in September 2007.

Nor can these deficiencies be cured by relabeling the per-plane duty as a user charge since it would not constitute a permissible user charge for purposes of Article 12 of the U.S. – EU Agreement.

The Embassy requests that the Foreign and Commonwealth Office provide this note to the Treasury for inclusion in the public record and for due consideration in the consultation process. As the proposal raises serious policy and legal concerns for the implementation of the U.S.-EU Agreement, the United States has placed this issue on the agenda for the Joint Committee meeting scheduled for April 15-16, 2008, in Washington and will share a

copy of this note with the European Commission and Member State  
representatives who attend.

Embassy of the United States of America,

London, [date].